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MICHAEL RODAK, JR., CLE

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-6638

ROBERT LEE MITCHELL,
Petitioner,

v.

STATE OF OHIO,
RESPONDENT.

MEMORANDUM BRIEF OF PLAINTIFF-RESPONDENT IN OPPOSITION TO GRANTING PETITION FOR A WRIT OF CERTIORARI

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OPINIONS BELOW

"The petitioner's citation of the opinions below appears to be a correct statement of the opinions in this matter and the respondent concurs in the verbage of the opinions as reported in defendant-petitioner's petition for Writ of Certiorari."

JURISDICTION

The judgment of the Ohio Supreme Court was entered on February 1, 1974. This judgment was based upon a judgment of affirmance as to the verdict of Guilty but

a reversal and remand for a new sentencing as to the sentencing procedure, in accordance with the opinion of the Court of Appeals of the First Appellate District issued on or about November 12, 1973.

It is the belief of the respondent that the petitioner's conviction under the laws of the State of Ohio and a reversal and remand for the purposes of sentencing only; as set forth in the opinion of the Court of Appeals of the First Appellate District of Ohio, was consistent with the United States Constitution and its Amendments and that this Court should not assume jurisdiction.

QUESTIONS PRESENTED

Counsel for the defendant-petitioner in this matter has submitted one question in which he believes to be presented. It is our belief that our response to his question divides itself into two parts.

We respectfully submit to the Court that there are two basic questions before this Court in this case, to-wit:

1. Shall a trial judge confronted with a disruptive, contumacious, stubborn and defiant defendant be given sufficient discretion to meet the circumstances of the case before him?

2. Can a defendant by his disruptive, contumacious, stubborn and defiant conduct stop a trial proceeding due to the inability of his attorney to proceed to represent him after all the evidence is in where said defendant after being turned down at a last minute request at the conclusion of the trial for a change of counsel strikes his attorney in the face causing blood to gush from his mouth and the inability of the attorney to proceed in said case?

REASONS FOR DENYING WRIT

Defendant-petitioner, Robert Lee Mitchell, was indicted for the crime of Robbery of a Financial Institution and Armed Robbery. He was appointed legal counsel to represent him and subsequently went to trial on or about November 30, 1972. On December 4, 1972, after all of the evidence had been admitted and after the Court had advised counsel what his charge would be to the jury, the defendant; in the presence of the jury interrupted the proceedings after all of the evidence had been in and both sides had rested by requesting the Court to dismiss his attorney because he did not want the attorney to represent him and to request that the Court appoint new counsel for him. The defendant was dissatisfied by virtue of what he stated to the Court was the fact that there were certain matters that he wanted his attorney to have brought out which the Court indicated were unimportant and irrelevant to the proceedings. When the Court refused to grant the defendant's request for a new attorney and an order to withdraw his then attorney; as quoted on page 161 of the record of the proceedings the following occurred:

> "(thereupon, the defendant turned and struck Mr. Bunyan in the face, in the view of the jury, causing blood to run from Mr. Bunyan's mouth.)"
>
> The defendant,
>
> "NOW I HAVE TO HAVE A NEW LAWYER"
>
> Mr. Bunyan,
>
> "I request permission to withdraw from the case, I cannot represent him, I cannot adequate talk." (Underlining and capitalization ours)

As indicated this case involves the basic questions of what control a trial Court shall have of the proceedings and whether or not a defendant by his disruptive, contemptuous misconduct in Court can deprive a Court and the people of the State of the right to proceed with a fair trial as against him. The defendant's conduct was clearly premeditated and intentional by virtue of the record of the proceedings where it is specifically set forth that immediately after striking his attorney in the face and causing blood to rush from the attorney's mouth, the defendant turned to the Judge and said, "Now you have to appoint me a new attorney". To condone this type of conduct would require this Court to given an active blessing upon any defendant charged with a serious offense who wanted to stop the proceedings when the thought the proceedings were getting a little too hot or the evidence a little too strong against him by requesting an immediate change of attorneys and when the Court overrules his request; by taking physical acts of violence as against his attorney.

As this Court stated in the case of *Illinois* v. *Allen*, as reported in 397 U.S. 345, 90 Supreme Court 1057, at page 1061 of the Supreme Court Addition:

> "It is essential to the proper administration of criminal justice that dignity, order and decorum be the hallmarks of all Court proceedings in our Country. The flagrant disregard in the Court Room of elementary standards of proper conduct should not and cannot be tollerated. WE BELIEVE TRIAL JUDGES CONFRONTED WITH DISRUPTIVE, CONTUMACIOUS, STUBBORNLY DEFIANT DEFENDANTS MUST BE GIVEN SUFFICIENT DISCRETION TO MEET THE CIRCUMSTANCES OF EACH

CASE." (Underlining and capitalization emphasis ours)

The Court in that case, then went on to cite various types of possible solutions. The Court indicated that the defendant might be charged with criminal contempt or he might be charged with civil contempt. As the Court stated in the *Allen* case at 1062:

> "It must be recognized, however, that a defendant might conceivably, as a matter of calculated strategy elect to spend a prolonged period in confinement and contempt in the hope that adverse witnesses might be unavailable after a lapse of time. A COURT MUST GUARD AGAINST ALLOWING A DEFENDANT TO PROFIT FROM HIS OWN WRONG IN THIS WAY." (Underlining and capitalization emphasis ours)

The Court also stated that the defendant might be charged with criminal contempt but this might be an irrelevant type of proceeding in light of a long term confinement as the result of the basic trial; which is the case currently before this Court.

Quoting from that same decision at page 1064 of the Supreme Court Addition in which Mr. Justice Brennan quoted from a previous case it was stated:

> "It does not seem to us to be consonant with the dictates of common sense that an accused person * * * should be at liberty whenever he pleased, * * * to break up a trial already commenced. The practical result of such a proposition, if allowed to be law, would be to prevent any trial whatever until the accused person himself should be pleased to permit it.

> * * * This would be a travesty of justice which could not be tolerated. * * * We do not think that any rule of law or constitutional principle leads us to any conclusion that would be so disastrous as well to the administration of justice as to the true interests of civil liberty.
>
> *"The question is one of broad public policy, whether an accused person, placed upon trial for crime and protected by all the safeguards with which the humanity of our present criminal law sedulously surrounds him, can with impunity defy the processes of that law, paralyze the proceedings of courts and juries and turn them into a solemn farce, and ultimately compel society, for its own safety, to restrict the operation of the principle of personal liberty. Neither in criminal nor in civil cases will the law allow a person to take advantage of his own wrong."* (emphasis ours)

So it is in the case currently before the Court. At the conclusion of all the evidence during which entire period of time defendant was represented by legal counsel; never having ever objected at any time prior thereto to his attorney; after conclusion of the remarks of the Court as to what he was going to charge the jury on in the presence of the defendant and his attorney and the agreement of said counsel; the defendant then pops up and demands that the Court order his attorney to withdraw and appoint a new attorney for him. The Court refuses to honor his request based on the reasons given, at which time the defendant strikes his attorney in the mouth causing blood to rush forth from the attorney's mouth to such an extent that the attorney is unable to proceed as reflected in the record and then immediately and defiantly turns to the Judge and says, "Now you have to appoint me a new attorney".

It is also important to note that the only thing that was done subsequent to that was the charge of the law to the jury which he Court indicated that he was going to do and the subsequent sentencing of the defendant after he was found guilty by the jury. It is also important to note that subsequent to the time of sentencing when defendant asked for an attorney, the Court subsequently appointed an attorney to represent him for the purposes of any appeal or any further proceedings. The newly appointed attorney filed a motion for a new trial to reflect possible errors which occurred and also appellate proceedings up to and including the current proceedings before this Court.

It is also important to note that the Court of Appeals felt based upon the entire record of proceedings that under the circumstances the verdict of guilty should stand and that the matter should be reversed and remanded as to sentencing for the purposes of having an attorney present with the defendant at the time of his sentence.

CONCLUSION

In conclusion we respectfully submitted that the Constitutional rights of the defendant-petitioner in this case were not violated. A Court must have some type of discretionary control based upon the circumstances presented when confronted with disruptive, contumacious, stubborn and defiant defendants who are hell-bent upon disrupting the Court proceedings and using said disruption to their own advantage. It is further respectfully submitted that a defendant shouldn't be permitted to profit from his own

wrongs and to take advantage of his own wrongs by his willful, malicious and disruptive conduct in the open Courtroom.

Respectfully submitted,

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